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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA**

**U.S. DISTRICT COURT
N.D. OF ALABAMA**

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UNITED STATES OF AMERICA,)
)
)
 v.) **CR-03-BE-0530-S**
)
 RICHARD M. SCRUSHY,)
)
 Defendant.)

DEFENDANT'S MOTION TO MODIFY CONDITIONS OF RELEASE

(Authorities Included)

Defendant Richard M. Scrushy respectfully submits this Motion to Modify
Conditions of Release.

Procedural History

The Indictment in this case was unsealed on November 4, 2003. On that same day, this Court held its initial appearance and arraignment. During those proceedings, an Order setting out the initial conditions for Mr. Scrushy's release was entered. On the very day the Order was entered, Mr. Scrushy began working with officials in the Probation Office to fulfill and comply with the conditions imposed. Since that date, he has complied with all the conditions and requests the Probation Office has made. In addition, over the past six months, he has traveled within the entire State of Alabama and outside the State with express permission from the Probation Office and the Court to do so. On some occasions, these trips have been via automobile, in some by commercial aircraft,

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and some in private aircraft (on occasion accompanied by counsel). There have been no lapses, no problems, and no issues. Mr. Scrushy has had ample opportunity to flee and has shown over and over again his intent to stay and defend against the charges.

Upon Mr. Scrushy's motion, on December 29, 2003, this Court entered an Order modifying the conditions of release and permitting Mr. Scrushy, with certain restrictions, to travel to New York, Washington, Atlanta, Palm Beach and within Alabama, except for the counties of Baldwin and Mobile. [Order Modifying Conditions of Release at 5-7.] It is this last exception, travel to Baldwin and Mobile Counties in Alabama, that Mr. Scrushy seeks to have modified in the instant motion.

Argument

On the day this Court imposed its initial conditions, it specifically stated that the conditions could be reviewed and revisited. [November 4, 2003 Transcript, at 30-31.] Given that the Court now has over six months of confirmation of Mr. Scrushy's determination to participate actively in his defense and his complete lack of inclination to flee, Mr. Scrushy asks this Court to further modify his conditions of release to allow him to travel within the remaining two counties in Alabama as often as needs dictate and without advance notification. When in Alabama, Mr. Scrushy would report to the U.S. Probation Office consistent with the requests and procedures he has and would continue to work out with the office the details (e.g., frequency of calls, time of day, type of phone-ins).

There is no need to review in any detail the purposes and standards for bail conditions. See United States v. Rose, 791 F.2d 1477, 1480 (11th Cir. 1986) (quoting United States v. Powell, 639 F.2d 224, 225 (5th Cir. 1981). The principle of applying conditions is to impose the least restrictive conditions that can assure the presence of the defendant. 18 U.S.C. § 3142 (c)(1)(B); Brown v. United States, 392 F.2d 189 (5th Cir. 1968). This Court itself noted in its December 29, 2003 Order, that conditions for release “need only ‘reasonably’ assure that the defendant’s appearance for trial and that they be the ‘least restrictive’ necessary to accomplish that end.” [Order Modifying Conditions of Release at 4.] Further, it is almost axiomatic that initial conditions of release often give way to changes once time has passed for the emotions of the original arrest or arraignment to subside and for the parties to determine how the conditions have worked and whether the right balance has been struck. Cases too numerous to cite reflect circumstances where courts subsequently loosen the restrictions placed on a defendant at an initial appearance.

Mr. Scrushy is in the real estate business. He has property interests or leads throughout the state, including the counties with access to the Gulf of Mexico. In Baldwin County, for example, with the District Court's specific permission he is operating and developing property. These projects are beginning their next phase as the spring and summer seasons are arriving. There is no reason to cut him off from pursuing as actively as he can his business in those areas. His involvement is essential to the success of the projects.

Mr. Scrushy's children will soon be out of school. During their recesses, he should be allowed to spend more time with them as he has done in the past and, due to the difficulty of traveling out of the state, at least have the access to recreational locations within Alabama. There is no good reason to deny him the ability to travel inside of Alabama with his family.

It appears that the original rationale for excluding the Southern District was the fact that it has access to the coast. However, Mr. Scrushy has already shown his intention is to appear and fight the charges. Moreover, the distinction between one part of Alabama and another is not effective. If it had been his intent to flee, he could have easily done so before now. As Mr. Scrushy is presumed completely innocent and as conditions are not supposed to be punitive, he should not be restricted from those areas in Alabama as he has proven his desire to stay and has earned the modification he is seeking.

This Court now has a half-year of experience in dealing with Mr. Scrushy's compliance with all conditions of release. As the Probation Office will attest, he has been meticulous in following each and every provision. The government's position that Mr. Scrushy's compliance only means that the conditions are working is far off the point. These are not the types of conditions that work without the cooperation and desire of the defendant. The record should be very clear that he has every intention of defending this case: he has hired counsel, filed motions, been engaged in discovery, attended court hearings, etc. In addition, since being charged he has become even more

involved in the community. His television program is certainly a clear indication of a person who is staying and fighting. The Court should be aware of that fact that Mrs. Scrushy is pregnant and is expecting in early September. Mr. Scrushy is not going to abandon his wife and new baby nor is he going to take the risk of trying to take them on what would be a terrible journey and life as a fugitive.

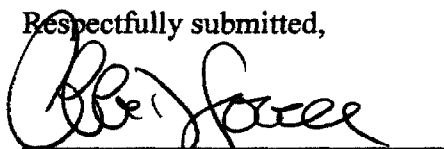
A recent development in another case is also instructive. In United States v. Bernard Ebbers, No. S2 02 CR. 1144 (BSJ), the government also raised the issue of travel with respect to another former CEO in a high profile case. This was at the beginning of the case when there was no track record of how the defendant would or would not comply with conditions of release. Even still, the Court provided travel outside and inside his home state of Mississippi. As to Mississippi, Mr. Ebbers was allowed unrestricted travel in the entire state, including the portion of the state with access to the Gulf of Mexico.

One further point should be made. When this Court first imposed conditions of release in November, there was a presumptive trial date for early 2004. That was changed to August, 2004, and very well may change again. This is a long time to be under conditions shown to be unnecessary, especially given the presumption of innocence, the purpose of bail conditions, and Mr. Scrushy's spotless record of compliance.

CONCLUSION

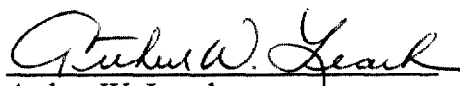
For the foregoing reasons, the defendant seeks modifications to the existing conditions of release and asks the Court to enter an Order granting his motion.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Abbe David Lowell', written over a horizontal line.

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A handwritten signature in black ink, appearing to read 'Arthur W. Leach', written over a horizontal line.

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CERTIFICATE OF SERVICE

I hereby certify that on May 3, 2004 a copy of the foregoing Motion to Modify
Conditions of Release was served by hand delivery to:

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